IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16118 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JINDAL SAW LTD - Petitioner(s)

Versus

SAUBHAGYACHAND SHAMBULAL VORA - Respondent(s)

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Appearance :
MR PM THAKKAR, WITH MR RAVINDRA SHAH for Petitioner(s) : 1,MRS KANAN R SHAH for Petitioner(s) : 1,
MR CH VORA for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 05/10/2005

CAV JUDGMENT

1. Heard ld. Sr.Counsel Mr. PM Thakkar for ld. Counsel Mr.Ravindra Shah for the petitioner. Invoking jurisdiction of this Court under Article 227 of the Constitution of India, the petitioner has prayed to

issue a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the impugned order dated 19.07.2005 Annex.A to the petition whereby the ld. 5th Jt. Civil Judge (S.D.), Bhuj-Kutch rejected the application exh.35 in Special Civil Suit No. 24/2004 and to allow application exh.35 directing the trial court to take the written statement of the petitioner-defendant company on record.

2(i) The petitioner is a Public Limited Company and and defendant in a Special Civil Suit No.24/2004. As the defendant company prayed vide application exh.35 that it may be permitted to file written statement in the suit as it could not file written statement in time granted. The day on which the application exh.35 was tendered, written statement was also kept along with the application prying permission.

(ii) In the application, the petitioner has contended that the defendant is a big company and the officers of the company conversant with the facts have to go out of district Kutch frequently and, therefore, the company could not submit its written statement within time. Who should sign the written statement was also a question. The application exh.35 was tendered in the Court on

05.06.2004 and the advocate appearing for the plaintiff objected and subjected by making an endorsement in the margine of the application exh.35 that the plaintiff should be heard before according permission to file written statement. Ultimately, the ld. Civil Judge, after hearing the advocates appearing for the parties, rejected the application exh.35 vide impugned order dated 19.07.2005.

(iii) It is relevant to note that the day on which application exh.35 was filed, one another application exh.37 under O.39 R.4 of Civil Procedure Code (CPC for short) was also submitted by the the petitioner defendant praying that in absence of written statement from the defendant side, interim prohibitory orders have been passed by the Court issuing directions to the parties to maintain status quo on 07.05.2004 and therefore that order may be modified in exercise of the powers vested with the Court under O.39 R.4 of CPC. The suit and the application praying interim orders are of 16.03.2004, but because of caveat filed by the defendant company, no ex-parte orders were passed, but after several adjournments and on hearing the parties, the ld. Civil Judge, allowed the application exh.5 passing interim prohibitory orders against the petitioner defendant from

entering, transgressing or encroaching upon the suit land so also against causing any obstructions in peaceful enjoyment of the property by the plaintiff-respondent. The defendant company was also prohibited from putting up any construction etc.

(iv) On 04.05.2004, a pursis was filed by the petitioner defendant that it would maintain status quo in respect of the suit property in question. Obviously, in absence of any formal reply-written statement, ld. Civil Judge proceeded with the application and ultimately passed the order below application exh.5.

(v) Before the application exh.35 praying permission to file written statement, one application exh.31 was filed by the plaintiff to take action or to pass orders under O.39,R.2(a) of CPC stating that defendant company is violating the interim prohibitory orders on 01.06.2004. When the application as well as application under O.39 R.4 were filed on account of injunctory order dated 07.05.2004 passed against the petitioner defendant earlier being operative, it was challenged by way of filing writ petition under Article 226/227 of the Constitution of India before this Court vide Spl.Civil Application No. 13864/2004. However, after hearing the parties, this Court (Coram: A.L.Dave, J), dismissed the

petition holding that;-

> "in light of the factual scenario and considering that the order impugned is of a inter-locutory nature, this Court is not inclined to exercise its powers under Article 227 of the Constitution of India. Petition must fail and stands rejected. Notice discharged.No costs."

(vi) The above order passed by this Court was assailed before the Apex Court under Civil Appellate Jurisdiction by preferring Special Leave Petition No.7369/2005. The Apex Court, considering the factual contingency and the nature of grievance placed by the petitioner defendant, was pleased to pass the following order on 18.04.2005 :-

> " Leave granted.
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> The complaint of the applicant is that his application was filed under Order 39 Rule 4 of the CPC for modification of an earlier interim order because of certain subsequent events was incorrectly rejected by the High Court.
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> The learned counsel for the respondent submits that there is an application filed by the respondent under Order 39 Rule 2(a) which is pending considering

before the trial Court. Therefore, if the matter is to be remanded, there should be a direction that both the application viz. I.A. Under Order 39 Rule 4 CPC filed by the petitioner and I.A. Under Order 39 Rule 2(a) filed by the respondent be heard and disposed of together at an early date.

In view of the above submissions, in the interest of justice, we allow this appeal, set aside the impugned order of the High Court and direct the trial Court to dispose of the application filed under Order 39 Rule 4 as also the application filed by the respondent Order 39 Rule 2(a) on merit as earlier as possible, preferably within two months. “

3. The Apex Court quashed the order and directed that both the applications viz.application under O.39 R.4 filed by the petitioner defendant and the application under O.39 R.2(a) filed by the respondent plaintiff be heard together on merits and as early as possible and preferably within two months. In compliance with the order passed by the Apex Court, the ld. Civil Judge rejected the application under O.39 R.4 filed by the petitioner-defendant, the day on which it refused to permit the defendant to file written statement. (Emphasis, being relevant for the present order,

supplied).

4(a) Earlier when the suit was filed and this Court and the Apex Court were approached by the present petitioner, the company was contesting the litigation with its earlier name i.e. M/s Saw Pipe Ltd. The company adopted new name in between and, therefore, the present petition is preferred by the company with the new name i.e. Jindal Saw Ltd.

(b) Ld. Sr.Counsel Mr. PM Thakkar for the petitioner defendant has taken this Court through the facts of the case of the defendant and other details emerging from the documents attached to the petition. It is submitted that the application exh.35 ought to have been allowed first and after considering the written statement and nature of resistance placed by the petitioner-defendant in the suit, application under O.39 R.4 preferred by the petitioner defendant should have been decided. The ld. Civil Judge has grossly failed in appreciating the submissions made for allowing the application exh.35 requesting to take written statement on record.

5. I have carefully gone through the grounds mentioned in para-3 of the petition. During the course of oral

arguments, ld. Sr.Counsel Mr. Thakkar pointed out that the ld. Civil Judge has failed in appreciating the purpose of introducing amended Rule 1 of Order 8 of CPC and its ultimate object. It is pointed out that the statements, object and reasons of the Code of Civil Procedure (Amendment) Act, 2002 states that:-

> " Recently, the Code of Civil Procedure (Amendment) Act,1999 was enacted by Parliament with a view to cutting short the delays at various levels. After its enactment a large number of representations were received both for and against its enforcement. The Law Commission of India in its 163rd Report also dealt with the code of Civil Procedure (Amendment) Bill, 1997 which was enacted later on as the Code of Civil Procedure (Amendment) Act, 1999.
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> 2. Before action could be initiated for enforcement of the Act, the Bar Council of India and certain local Bar Associations asked the Government to relook into certain provisions which could cause hardship to the litigants. Accordingly, the provisions of the Code of Civil Procedure (Amendment) Act, 1999 and other proposals to reduce delay in the disposal of civil cases were discussed

with legal luminaries. The Government has further considered the mater in all its aspects after consulting the Bar Council of India and other concerned and based on the outcome of the deliberations, it is now proposed to further amend the Code of Civil Procedure, 1908, consistent with the demands of fair play and justice."

6. It is argued that the ld. Civil Judge was under obligation to hear and decide the application preferred under O.39 R.4 of CPC as expeditiously as possible and on merits and in absence of formal written statement, it was not possible to decide the application preferred by the petitioner defendant and when ld. Civil Judge was under obligation to decide the application preferred under O.39 R.4 on merits, ld. Judge could have enlarged the time to file written statement or could have permitted the defendant to submit written statement especially when the day on which the application exh.35 came to be filed, no formal issues were framed and, therefore, taking the written statement of the petitioner defendant on record, would not have caused any prejudice to the plaintiff or even could not have delayed the proceedings. The Court of the ld. Civil Judge (S.D.) at Bhuj-Kutch is taking old pending civil suits of the year 1995-96 and, therefore,

there was no scope for the ld. Civil Judge to conduct the suit filed by the plaintiff on merits expeditiously and the grounds when were placed for not filing the written statement within the time stipulated under O.8 R.1 of CPC, the Court should not have refused permission to file written statement. One of the main arguments of ld. Sr.Counsel Mr. Thakkar is based on the decision of the Apex Court in the case of **Kailash v/s Nanhaku and others, AIR 2005 SC 2441** and in view of the ratio of the decision, permission to file written statement should have been granted by the ld. Judge. It is argued by ld. Sr.Counsel Mr. Thakkar that it is true that the above-cited decision of the Apex Court was not before the ld. Civil Judge while dealing with the application exh.35, but now this Court at least in view of the ratio of the above-cited decision, should allow this petition and direct the ld. Civil Judge to accept the written statement of the petitioner defendant on record. According to Mr. Thakkar, the Apex Court in its above-cited decision, has held that the provision of O.8 R.1 of CPC is a procedural law and not mandatory. So, by adding some element of deterrence, this Court should pass appropriate orders directing the ld. Civil Judge to accept the written statement.

(ii) In the present case, the written statement submitted by the petitioner defendant was well within the period of 90 days. The suit preferred by the respondent defendant is of 16.03.2004. Thereafter, on 01.06.2004, the plaintiff requested the court to take up the matter on hand so that the plaintiff can file an application (exh.31) under O.39 R.2(a) R/w Sec.151 of CPC. On that day, the ld. Presiding Judge was on leave before whom the suit was actually pending. On 05.06.2004, application exh.35 came to be filed. Prior to that date, on 03.06.2004, when the suit was listed for hearing, the request made to adjourn the matter on behalf of the petitioner defendant was granted as the ld. Presiding Judge was on leave.

7. I have considered the affidavit-in-reply filed on behalf of the respondent plaintiff Saubhagyachand Shambhulal Vora. Both the parties before this Court have tried to comment on the merits of their respective case and it is not necessary, in the present case, to comment on the merits of the case. For the sake of brevity and convenience, the Court would like to reiterate the chronology of proceedings that have taken place in the Lower Court since 11.02.2004- the day on which the caveat application came to be filed:-

(i) On 16.03.2004, the suit came to be instituted and the defendant was served with the copy of the plaint as well as an application for interim relief exh.5 with other material. On 19.03.2004, hearing of application exh.5 was fixed, but the suit was adjourned on account of the application for adjournment by the petitioner defendant. The matter was thereafter adjourned to 23.03.2004, 26.03.2004, 31.03.2004, 01.04.2004, 06.04.2004, 13.04.2004, 17.04.2004 and 21.04.2004. That on 30.04.2004, the petitioner defendant submitted an application for adjournment vide exh.21, but the ld. Counsel appearing for the plaintiff respondent objected the adjournment pointing out that the construction activities are going on by the petitioner defendant and a report prepared by the Court Commissioner was produced. On that day, the matter came to be adjourned to 01.05.2004. Adjournment applications preferred i.e. exh.22 dated 01.05.2004, exh.23 dated 03.05.2004, exh.25 dated 05.05.2004 were submitted and the same have been granted by the ld. Presiding Judge. Application exh.5 ultimately came to be decided on merits by the order dated 07.05.2004. With affidavit-in-reply, the plaintiff has produced typed copy of the Rojkam and it appears that the request for adjournment made by the defendant company was resisted since 06.04.2004. Endorsement made

by the advocate appearing for the plaintiff below application exh.15 reveals that as earlier applications praying adjournment by the defendant have been granted by the Court and, therefore, the application exh.15 praying time should not be granted and the Court should hear the application exh.5 praying interim injunction on merits. However, that application was granted and a short adjournment was given to the petitioner defendant. It is argued by ld. Sr. Counsel Mr. Thakkar that irrespective of the resistance placed by the plaintiff, the ld. Judge has granted time to the defendant company and adjourned the matter so that the petitioner defendant can submit his point of view before the Court. This entire exercise has been made within the period of 90 days. Even the order passed by the ld. Civil Judge on 07.05.2004 was well within 90 days. The petitioner defendant was to challenge the order passed below application exh.5 and requested the court to suspend the operation of the said order and that request was also rejected and, therefore, according to Mr. Thakkar, the petitioner defendant was obliged to file a petition in this Court which ultimately came to be dismissed vide judgment and order dated 27.12.2004.

(ii) It is clear from the proceedings drawn that till

11.06.2004- the day on which one Advocate Mr. BM Dholakia filed his vakalatnama signed by duly constituted Attorney on behalf of the defendant, the ld. Presiding Judge of the Court was on leave and on 18.06.2004, it seems that after reopening of the vacation in the Courts, the plaintiff respondent submitted his reply to the applications exh.35 & 37. But on that day, the matter could not be conducted as the ld. Presiding Judge was transferred and successor-in-office had not taken over. The successor Judge took over and conducted the hearing of the application exh.35 whereby the request to accept written statement was extended and application praying modification in his earlier order of interim injunction has been decided. It is relevant to note that earlier when the suit which was pending in the court of ld. 2nd Jt. Civil Judge (S.D.), Bhuj, the ld. Presiding Judge could not hear the parties qua the applications exh.35 & 37 because of the resolution of the strike passed by Bhuj Bar Association. On 16.10.2004, an application for adjournment filed by the petitioner defendant was granted and thereafter, an application exh.35 & 37 came to be decided.

8. The litigation that had taken shape in between can not be ignored in light of the above set of facts because

the parties were firstly before this Court in Special Civil Application referred to herein above and thereafter before the Apex Court when SLP was entertained by the Apex Court. Each adjournment granted irrespective of the resistance by the plaintiff side can be equated with the order of extension of time. Here, it would be proper for the Court to refer relevant provisions of Rule 1 of Order 8 of CPC. Amended Rule -1 operates since 1st July, 2002. So, the day on which written statement was required to be filed, amended Rule-1 of O.8 of CPC was very well operative. Scheme of Rule 1 of Order 8 of CPC has been interpreted in the above-cited decision in the case of Kailash (supra) and other judgments even of this Court, but it is not necessary to refer to other decisions when the verdict of the Apex Court interpreting the Scheme of Rule-1 of Order 8 of CPC is available before this Court as a guiding force. The defendant is under statutory obligation to file written statement within a period of 30 days from the date of service of summons on him. Presentation of written statement within this stipulated period of 30 days is a statutory obligation and that obligation has to be discharged. However, the proviso makes the defendant entitled to submit his defence in the form of a written statement "on such other date as may be specified by the Court." (emphasis supplied). Of

course, for specifying any other date, the Court is supposed to record reasons in writing , but the Court can consider the cause praying for adjournment in that application and is entitled to pass a short order and such an application for adjournment should be read as a whole. In the case on hand, it is not the say of the Court while rejecting the application exh.35 that at any point of time, request to grant adjournment to file a reply was specifically rejected by a reasoned order. On the contrary, it emerges that the Court decided each application for adjournment filed by the petitioner defendant granting short adjournment irrespective of the resistance placed by the plaintiff. The discretion of the Court to grant such time is made limited upto 90 days from the date of service of the summons. So, there is an embargo even on the ld. Presiding Judge of the Court in fixing some other date and permitting the defendant to place his defence and this period should not cross the outer limit fixed by the proviso i.e. 90 days. In the case of Kailash (supra), the dispute cropped up on account of non-filing of the written statement beyond the period of 90 days, had seen the light of the Apex Court and in the background of the facts that were placed before the Apex Court, the Apex Court held that the scheme of R.1 of O.8 of CPC, of course is in mandatory

form, it is a procedural law and it should be read as directory provision instead of a mandatory provision. Here, this Court would like to reproduce relevant part of the decision of the Apex Court in the case of Kailash (supra) relied on by the other side whereby it is argued that the observations of the Apex Court in that case would cut the case of the petitioner defendant where the Apex Court has said that;-

> “40. Considering the object and purpose behind enacting Rule 1 of Order VIII in the present form and the context in which the provisions is placed, we are of the opinion that the provision has to be construed as directory and not mandatory. In exceptional situations, the court may extend the time for filing the written statement through the period of 30 days and 90 days, referred to in the provision, has expired. However, we may not be misunderstood as nullifying the entire force and impact- the entire life and vigour- of the provision. The delaying tactics adopted by the defendants in law courts are now proverbial as they do stand to gain by delay. This is more so in election disputes because by delaying the trial of election petition, the successful candidates may succeed in enjoying the substantial part, if not in

its entirety, the term for which he was elected even though he may loose the battle at the end. Therefore, the judge trying the case must handle the prayer for adjournment with firmness. The defendant seeking extension of time beyond the limits laid down by the provision may not ordinarily be shown indulgence.

41. Ordinarily, the time schedule prescribed by Order VIII, Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the Court. The extension of time sought for by the defendant from the court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for asking more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the Court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order VIII, Rule 1 of the Code was being allowed to be

made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended."

10. Undisputedly in the present case, written statement is filed within 90 days. It is true that the application for adjournment preferred frequently by the petitioner defendant does not disclose detailed reasons and simply says that the defendant wants to study the document and, therefore, defendant should be given time to file a written statement. There is also an element whereby the Advocate of the defendant also says that he could not prepare the written statement because some important documents require study. The objection raised by the advocate for the plaintiff below application exh.23 is found relevant whereby the plaintiff's advocate had objected the request for adjournment on 03.05.2004 where the Court has observed that it seems that the defendant wants to protract the proceedings and sufficient time has been given earlier to the defendant for filing written statement. However, last adjournment was granted to the defendant for the purpose. So, it is rightly argued that the order passed below application exh.23 was the last

opportunity for the petitioner defendant to file written statement. So, on the next date of hearing i.e. on 04.05.2004, the defendant could have filed written statement, but as he had failed in doing so, the application for adjournment ultimately came to be rejected on 04.05.2004. So, it is possible to infer that on 03.05.2004,a day's adjournment was granted and ultimately the Court decided application exh.5 and granted prohibitory orders against the defendant. The effect of non-filing of the written statement, ultimately tilted the balance to some extent in favour of the plaintiff. Thereafter, before Court frames formal issues or decides to proceed further, application exh.35 came to be filed requesting the Court to accept the written statement. Now, the crucial question before this Court is whether after rejection of the application exh.23 and on any day within 90 days, the ld. Civil Judge could have granted permission to put up the defence to the defendant by way of written statement ? The case before the Apex Court in the case of Kailash (supra) is the case where the permission to file written statement beyond prescribed period i.e. 90 days was brought for consideration and the Apex Court while dealing with that dispute, has observed that the scheme of R.1 of O.8 of CPC is procedural enactment and it is directory in

nature, in that event, it was legally possible for the ld. Civil Judge to accept the written statement of the petitioner defendant on record according him permission by imposing some deterrence i.e. costs. When the present petitioner defendant has approached the Court requesting to grant permission to file his defence, in that eventuality, the following observations of the Apex Court in the above-cited decision in the case of Kailash (supra), would positively help the present petitioner where the Apex Court has said that:-

> “43. The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the Court. In no case, the defendant shall be permitted to seek extension of time when the Court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel. The Court may impose costs for dual purpose; (i) to deter the defendant from seeking any extension of time just for asking and, (in the interest of justice) to compensate the plaintiff for the delay and inconvenience caused to him.
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> 44. However, no strait-jacket formula can be laid

down except that the observance of time schedule contemplated by Order VIII, Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. We hold that Order VIII, Rule 1, though couched in mandatory form, is directory being a provision in the domain of processual law."

While summing up, the Apex Court has briefly stated its conclusion in para-35 of the decision and sub-paras (iv) and (v) of para-45 are relevant for our purpose which are as under:-

(iv) The purpose of providing the time schedule for filing the written statement under Order VIII, Rule 1 of CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though, the language of the proviso to Rule 1 of Order VIII of the CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the Procedural Law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time

schedule provided by Order VIII Rule 1 of the CPC is not completely taken away.

(v) Though Order VIII, Rule 1 of the CPC is a part of Procedural Law and hence directory. Keeping in view the need for expeditious trial of civil causes which persuaded the Parliament to enact the provisions in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the Court on its being satisfied. Extension of time may be allowed if it was needed to be given for the circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the

facts and circumstances of a given case.”

11. It is necessary to reproduce the earlier scheme of R.1 of O.8 of CPC which reads as under:-

> “R.1 Written Statement.--(1) The defendant shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence. “

Now, after amendment, it is apparent that substantive change has been made prescribing the time limit and, therefore, while interpreting the language of the amended provision of R.1 and ultimate effect thereof, one should read sub-rule 9 as well as sub-rule 10 of O.8 of CPC. The defendant if permitted can file written statement within 30 days is not the privileged period and the ld. Presiding Judge even has jurisdiction to reject the application praying time to file written statement. But while dealing with such application, first period of 30 days shall have to be kept in mind by the ld. Presiding Judge. The second period is the period after expiry of 30 days and before expiry of 90th day. The effect of rejection of an application for adjournment may have a different bearing in a hotly contested litigation or any other urgent or sensitive matter. The third period

is exclusively privileged period i.e. period beyond 90 days where the Court can permit the defendant to file a written statement in a given circumstance and facts situation emerging from the application praying such enlargement of time and seeking such permission. On rejection of the application seeking time to file written statement, if the Court has not decided to draw the decree under O.8 R.10 of CPC or the plaintiff is asked to prove his case by framing issues or expressing intention to cast issues, then obviously the defendant, even in absence of formal written statement can cross-examine the plaintiff or can raise legal objections as to the admissibility of the document during the trial and can make all attempts to see that in absence of formal case by the defendant, the defendant fails in getting the decree as prayed. As observed by the Apex Court in the case of Kailash (supra), it is not the privilege of each plaintiff to have decree in absence of written statement under O.8 R.10 of CPC. So, when the Court has not decided to draw the decree finally under O.8 R.10 of CPC and in the present case the plaintiff has not prayed that now decree be passed as contemplated under O.8 R.10 of CPC, then the defendant could have been granted permission by adding an element of deterrence. In these facts situation, it is necessary to observe that the ld. Lower

Court has failed in exercising the discretionary jurisdiction vested with it when the scheme of O.8 R.1 of CPC has been interpreted now as directory and not mandatory.

12. It was possible for the Court to decide the application exh.37 preferred under O.39 R.4 of CPC against the defendant and to decide the application exh.35 in favour of the petitioner or it could have differed the decision on the application preferred under O.39 R.4 of CPC allowing application exh.35 according permission. If the intention of the defendant was to protract the proceedings, then, that intention could have been dealt with by awarding exemplary costs on the defendant. It was also relevant for the Court to note that non-filing of the written statement has resulted into adverse result on application exh.5 and therefore only, he was compelled to take recourse under R.4 of O.39 of CPC by filing appropriate application thereunder.

12. The say of the Apex Court while dealing with SLP also is that the application preferred under O.39 R.2(a) of CPC and under O.39 R.4 of CPC should be decided on merits and the day on which the application preferred under O.39 R.4 was heard and came to be decided, the written statement was formally tendered to the Court with

a request to accept it and permit the defendant to put up his defence. In these special facts situation, application exh.35 ought to have been allowed. It is true that guiding decision of the Apex Court in the case of Kailash (supra) was not before the ld. Civil Judge, but when the said decision is available on record before this court, then this petition requires to be allowed accepting the submission of ld. Sr.Counsel Mr. Thakkar. Rejection of request to grant adjournment to file written statement, as in the present case, would not shut the doors of any defendant, if he is able to pray to the Court to accept the written statement within 90 days and the Court is supposed to deal with such application on merits as if the scheme of O.8 R.1 of CPC is directory. In the same way, if such a request is beyond a period of 90 days, then in that fact situation when it is found that the defendant could not file written statement for the reasons beyond control, or on account of some extra-ordinary circumstances to the satisfaction of the Court or any cause capable of convincing the Court to permit him to file written statement, then, he can also be granted time to put up his defence on grant of such permission. In view of the Scheme of R.1 of O.8 of CPC and in the background of the decision of the Apex Court in the case of Kailash (supra), refusal should be on

sound footing and with reasons whereby the Court is able to observe that the grant of permission even by adding an element of deterrence, also would not be justified. Here in the present case, that fact situation is absent and, therefore, this petition requires to be allowed.

13(i) Referring the decision in the case of Kailash (supra), the Apex Court in the case of **Rani Kusum (Smt) v/s Kanchan Devi (Smt) & Others, (2005)6 SCC 705,** has observed that R.1 of O.8 of CPC, after amendment casts an obligation on the defendant to file written statement within 30 days from the date of service of summons on him and within extended period i.e. 90 days. But, it will be beneficial to reproduce the relevant paras 9, 10 & 14 for the purpose of present decision :-

> “9. Order 8 Rule 1 after the amendment casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the Court and also does not specifically take away the power of the court to take the written statement on record through filed beyond the time as provided for. Further, the nature of the provisions contained in Order 8 Rule 1 is procedural. It is not

a part of the substantive law. The substituted Order 8 Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to plaintiffs and petitioners approaching the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice burried.

10. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system,no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

14. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice.

Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant i n the administration of justice. “

(ii) In cases of grave circumstances, or where the matters are sensitive or otherwise very important on public policy, the morality of justice at the hands of law troubles the Judge's conscious and in such a situation, the observations made by the Apex Court in above-referred paras in the case of Kailash (supra), obviously can be pressed into service.

(iii) Three Judges Bench of the Apex Court in the case of **Salem Advocate Bar Association v/s Union of India (in the interest of justice), (2005)6 SCC 344 has dealt with the provisions of O.8 R.1 of CPC and after referring three important earlier decisions of the Apex Court in the cases of (i) Raza Buland Sugar Co.Ltd. V/s Municipal Board, Rampur ((1965)1 SCR 970 = AIR 1965 SC 895), (ii) Sangram Singh v/s Election Tribunal, Kotah ((1955) 2 SCR 1 = AIR 1955 SC 425, and (iii) Topline Shoes Ltd. V/s Corporation Bank ((2002)6 SCC 33,** has observed that the provisions of O.8 R.1 provided for upper limit of 90 days to file written statement is directory. However, it is also observed that **“we wish to make it clear that the order extending time to file written statement can not be**

made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. The discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by O.8 R.1." (emphasis in original).

(iv) It is not necessary to reproduce relevant paras 15, 16, 17,18, 19 & 20 of the decision in the case of Salem Advocates Bar Association (supra), but the conclusion drawn by the ld. Bench in para-21 is based mainly on these paras and this Court can not ignore this aspect while dealing with the submissions made by Mr. Thakkar.

13. In view of above, petition is allowed. The impugned order rejecting application exh.35 seeking permission to file written statement is hereby quashed and set aside and application exh.35 is allowed, although the said application is not a detailed and reasoned application and it was possible for the defendant to file well-reasoned application. The petitioner defendant is permitted to put up his defence and written statement on record, of course subject to the payment of costs which is quantified at Rs.15,000/ (Rs. Fifteen thousand only). The ld. Civil Judge shall accept the written statement and exhibit the same and read the same as such in the

suit. In absence of any specific relief prayed qua the order passed below application exh.37, the Court is not inclined to comment upon the merits of the order passed below application exh.37, otherwise, this is a case where the ld. Trial Judge could have been asked to hear and decide the application exh.37 in the background of the written statement that was tendered as if application exh.35 is allowed. The amount of costs shall be deposited with the lower Court before whom the suit is pending within 15 days from the date of receipt of the writ of order of this Court.

Rule is made absolute accordingly.

(C.K. BUCH, J)

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